MT LEGISLATIVE HISTORY

Chapter 422 1977

Bill H: ____ S 311 Original bill & hist. ✓C

H. Committee on judiciary		S. Committee on judiciary	
Hearing Date(s)	___C	Hearing Date(s)	___C
3/14	✓C	2/11	✓C
	___C		___C
	___C		___C
Date Out 3/25	✓C	2/18	✓C

Did this bill originate in an interim committee? ___Yes ✓No

Committee _____ Report _____

Senate BILL NO. 311

INTRODUCED BY Swanson Roberts

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE PROCEDURES FOR THE TERMINATION OF THE PARENTAL RIGHTS OF CHILDREN PROPOSED TO BE RELEASED FOR ADOPTION; AMENDING SECTION 61-317, R.C.M. 1947; REPEALING SECTIONS 61-325 AND 61-326, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. There is a new R.C.M. section numbered 61-328 that reads as follows:

61-328. Form, execution, and revocation of releases -- termination of parents' or guardians' rights. (1) Any parent or guardian who proposes to relinquish custody of a child for purposes of placing the child for adoption may do so by formally executing a release whereby all parental rights to the child are voluntarily relinquished to an agency of the state of Montana or a licensed adoption agency.

(2) Except as otherwise provided in this section, a release shall be by a separate instrument executed before a notary public.

(3) If the person from whom a release is required is a member of any of the armed services or is in prison, the release may be executed and acknowledged before any person authorized by law to administer oaths.

(4) If the release is executed in another state or country, the court having jurisdiction over the adoption proceeding in this state shall determine whether the release was executed in accordance with the laws of that state or country and may not proceed unless it finds that the release was so executed.

(5) Upon the filing of the release of a child by a parent or guardian, the court immediately shall issue an order terminating the rights of that parent or guardian to that child. If the rights of both parents, the surviving parent, or the guardian have been terminated, the court shall issue an order committing the child to the agency of the state of Montana or the licensed adoption agency to which the release was given.

(6) Entry of an order terminating the rights of both parents pursuant to subsection (5) terminates the jurisdiction of the district court over the child in any divorce or separate maintenance action.

(7) Upon petition of the person or persons who executed the release and of the agency of the state of Montana or licensed adoption agency to which the child was released, the court with which the release was filed may grant a hearing to consider whether the release should be revoked. A release may not be revoked if the child has been

placed for adoption. A verbatim record of testimony related to a petition to revoke a release shall be made.

Section 2. There is a new R.C.M. section numbered 61-329 that reads as follows:

61-329. Children born out of wedlock -- release -- consent. (1) If the mother of a child born out of wedlock proposes to release the child for adoption and the release or consent of the natural father cannot be obtained, the child may not be placed for adoption until the parental rights of the father are terminated by the court as provided in this chapter, by the court pursuant to Title 10, chapter 13, or by a court of competent jurisdiction in another state or country.

(2) Pending the termination or other disposition of the rights of the father of the child born out of wedlock, the mother may execute a release terminating her rights to the child. If the mother releases the child, the agency of the state of Montana or the licensed adoption agency to which the child is released may file a petition under this chapter or a petition of dependency or neglect pursuant to Title 10, chapter 13. Pending disposition of the petition, the court may enter an order authorizing temporary care of the child.

(3) At the request of the mother, her formal execution of a release shall be delayed until after the court has

determined the identity of the father and has awarded custody of the child to the father or terminated his rights under this chapter.

Section 3. There is a new R.C.M. section numbered 61-330 that reads as follows:

61-330. Notice of intent to claim paternity. (1) Before the birth of a child born out of wedlock, a person claiming under oath to be the father of the child may file a verified notice of intent to claim paternity with the district court in any county of this state. The form of the notice shall be prescribed by the director of the department of health and environmental sciences and supplied to the clerks of the district courts. The notice shall include the claimant's address. On the next business day after receipt of the notice, the court shall transmit the notice to the records and statistics bureau of the department of health and environmental sciences. If the mother's address is stated on the notice, the records and statistics bureau shall send a copy of the notice by first-class mail to the mother of the child at the stated address.

(2) A person filing a notice of intent to claim paternity or acknowledging paternity in accordance with 61-305 shall be presumed to be the father of the child for purposes of this chapter unless the mother denies that the claimant is the father. Such notice is admissible in a

paternity proceeding under 61-307 and creates a rebuttable presumption as to the paternity of that child for purposes of that section. Such notice creates a rebuttable presumption as to paternity of the child for purposes of a dependency or neglect proceeding under Title 10, chapter 13.

(3) A person who makes a timely filing of notice of intent to claim paternity or who formally acknowledges paternity under 61-305 is entitled to notice of any hearing to determine the identity of the father of the child and any hearing to determine or terminate his paternal rights to the child.

Section 4. There is a new R.C.M. section numbered 61-331 that reads as follows:

61-331. Expected child -- intent to release or consent, petition and notice. (1) In order to provide due notice at the earliest possible time to a putative father who may have an interest in the custody of an expected child or in the mother's intended release of an expected child for adoption and in order to facilitate early placement of a child for adoption, a woman pregnant out of wedlock may file with the district court an ex parte petition which sets forth the following:

(a) her intent to release her expected child for adoption;

(b) the approximate date and location of conception;

(c) the expected date of her delivery; and

(d) the identity and whereabouts of the putative father of her expected child.

(2) The petition may allege more than one putative father whenever circumstances warrant. The petition shall be verified. Upon the filing of the petition, the court shall issue a notice of intent to release, which notice shall be served upon the putative father or fathers in the manner provided by the Montana rules of civil procedure or in any other manner which the court may direct. Proof of such service shall be filed with the court.

(3) A notice of intent to release shall:

(a) indicate the approximate date and location of conception of the child and the expected date of delivery;

(b) inform the putative father of his right under 61-330 to file a notice of intent to claim paternity before the birth of the child;

(c) inform the putative father of the rights to which his filing of notice of intent to claim paternity will entitle him under 61-330(3); and

(d) inform the putative father that his failure to file a notice of intent to claim paternity before the expected date of delivery constitutes a waiver of his right to receive the notice to which he would otherwise be entitled under 61-330(3) and constitutes a denial of his

interest in the custody of the child, which denial shall result in the court's termination of his rights to the child.

(4) The petition shall be filed with the court not later than 30 days prior to the expected date of delivery.

Section 5. There is a new R.C.M. section numbered 61-332 that reads as follows:

61-332. Proceeding to determine father's identity and terminate rights. (1) If a child is born out of wedlock and the mother executes or proposes to execute a release terminating her rights to the child or if the child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished or the mother or person having custody of the child shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by the court. The court shall hold a hearing as soon as practical to determine the identity of the father and to determine or terminate the rights of the father as provided in this section and in 61-333 and 61-334.

(2) Proof of service of a notice of intent to release or the putative father's verified acknowledgment of notice of intent to release shall be filed with the court, if such

notice was given to the putative father. The court shall request the records and statistics bureau of the department of health and environmental sciences to send to the court a copy of any notice of intent to claim paternity of the particular child which the bureau has received.

(3) If the mother has failed to name a putative father or has failed to file a notice of intent to release, the court shall cause inquiry to be made of the mother in an effort to identify the natural father. The inquiry shall include the following: whether the mother was married at the time of conception of the child or at any time thereafter; whether the mother was cohabitating with a man at the time of conception or birth of the child; whether the mother has received support payments or promises of support payments with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child. Notwithstanding this section or any other provisions of law and in consideration of her right to privacy, no mother of a child who is the subject of proceedings under this act may be compelled to testify concerning, or to divulge the identity of, the father or possible father of that child.

(4) Notice of the hearing shall be served upon the following persons in the manner appropriate under the

Montana rules of civil procedure or any manner which the court shall direct:

(a) a putative father who has timely filed a notice of intent to claim paternity as provided in 61-330 or 61-331;

(b) a putative father who has not been served with a notice of intent to release at least 30 days before the expected date of delivery specified in the notice of intent to release;

(c) any other male who was not served pursuant to 61-331(1) with a notice of intent to release and who the court, after inquiry of the mother or any other appropriate person, has reason to believe may be the father of the child.

(5) The notice of hearing shall inform the putative father that his failure to appear at the hearing constitutes a denial of his interest in custody of the child, which denial will result in the court's termination of his rights to the child.

(6) Proof of service of the notice of hearing required by subsection (4) shall be filed with the court. A verified acknowledgment of service by the party to be served is proof of personal service. Notice of hearing may not be required if the putative father is present at the hearing. A waiver of notice of hearing by a person entitled to receive it is sufficient. If no person has been identified as the natural

father or possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and, if so, shall order publication or public posting at the times and places and in the manner it considers appropriate. The name of the natural mother may be included in such publication only with her written consent.

(7) At the hearing, the court shall receive evidence as to the identity of the father of the child. Based upon the evidence received and the court's inquiry, the court shall enter a finding identifying the father or declaring that the identity of the father cannot be determined.

(8) If the court finds that the father of the child is a person who did not receive either a timely notice of intent to release pursuant to 61-331 or a notice required pursuant to 61-332(4) and who has not waived his right to notice of hearing and is not present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing.

Section 6. There is a new R.C.M. section numbered 61-333 that reads as follows:

61-333. Grounds for termination of father's rights. (1) If the court has proof that the person who it determines pursuant to 61-332 to be the father of the child was timely

served with notice of intent to release pursuant to 61-331 or was served with or waived the notice of hearing required by 61-332(4), the court may permanently terminate the rights of the putative father if:

(a) the putative father submits a verified acknowledgment of his paternity and a denial of his interest in custody of the child;

(b) the putative father files a denial of paternity. For purposes of this section the filing of the denial of paternity constitutes a waiver of notice of hearing and constitutes a denial of his interests in the custody of the child;

(c) the putative father was served with a notice of intent to release in accordance with 61-331(2) at least 30 days before the expected date of delivery specified in that notice but failed to file an intent to claim paternity either before the expected date of delivery or before the birth of the child; or

(d) the putative father is given proper notice of hearing in accordance with subsection (4) or (6) of 61-332 but either fails to appear at the hearing or appears and denies his interest in the custody of the child.

(2) If the identity of the father cannot be determined or if the identity of the father is known but his whereabouts cannot be determined, the court shall receive

evidence to determine the facts in the matter. The court may terminate the rights of the putative father if the court finds from the evidence that reasonable effort has been made to identify and locate the father and that any of the following circumstances exist:

(a) The putative father, whose identity is not known, has not made a provision for the child's care and did not provide support for the mother during her pregnancy or during her hospitilization.

(b) The putative father, whose identity is known but whose whereabouts are unknown, has not provided support for the mother, has not shown any interest in the child, and has not made provision for the child's care, for at least 90 days preceding the hearing required under 61-332.

(3) Subject to the disposition of an appeal, upon the expiration of 6 months after an order terminating parental rights is issued under this section, the order cannot be questioned by any person, in any manner or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.

Section 7. There is a new R.C.M. section numbered 61-334 that reads as follows:

61-334. Best interests of the child -- custody to father -- legitimation. (1) If the putative father appears

at the hearing and requests custody of the child, the court shall inquire into his fitness and his ability to properly care for the child and shall determine whether the best interests of the child will be served by granting custody to him or to the agency of the state of Montana or licensed adoption agency to which the mother has released or proposed to release custody of the child. If the court finds that it would not be in the best interests of the child to grant custody to the putative father, the court shall terminate his rights to the child.

(2) If the mother of the child has released the custody of the child to an agency of the state of Montana or a licensed adoption agency, the agency shall be a proper party to petition the court for custody of the child.

(3) If the parental rights of the mother are terminated pursuant to this chapter or other law and if the court awards custody of the child out of wedlock to the putative father, the court shall enter an order granting custody to the putative father and legitimating the child for all purposes.

Section 8. Section 61-317, R.C.M. 1947, is amended to read as follows:

"61-317. Costs. The court may order reasonable fees of counsel, experts, and the child's guardian ad litem, and other costs of the action and pre-trial proceedings,

including blood tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid out of the treasury of the county in which the action is brought. Attorneys' fees may not be assessed against an agency of the state of Montana or a licensed adoption agency which brings an action under this chapter to terminate the parental rights of a natural parent."

Section 9. Repealer. Sections 61-325 and 61-326, R.C.M. 1947, are repealed.

Section 10. Effective date. This act is effective on its passage and approval.

-End-

FORTY-FIFTH LEGISLATIVE SESSION

1977 Senate

COMMITTEE ON JUDICIARY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
S.B. 274	1-25-77	Trsfd. out 1-28-77							
S.B. 278	1-26-77	2-8-77	2-14-77		2-14-77				
S.B. 301	1-26-77	2-8-77	2-17-77	2-17-77					
S.B. 311	1-27-77	2-11-77	2-18-77			2-18-77			
S.B. 318	1-28-77	2-9-77	2-15-77			2-15-77			
S.B. 326	1-28-77	2-7-77	2-7-77			2-7-77			
S.B. 332	1-29-77	2-10-77	2-12-77		2-12-77				
S.B. 335	1-29-77	2-7-77	2-18-77			2-18-77			
S.B. 337	1-29-77	2-14-77	2-14-77		2-14-77				
S.B. 338	1-29-77	2-14-77	2-14-77		2-14-77				
S.B. 339	1-29-77	2-10-77	2-10-77			2-10-77			
S.B. 343	1-29-77	2-14-77	2-14-77		2-14-77				
S.B. 356	2-1-77	2-14-77	2-14-77			2-14-77			
S.B. 369	2-1-77	2-9-77	2-14-77		2-14-77				
S.B. 385	2-3-77	2-17-77	2-18-77	2-18-77					
S.B. 393	2-14-77	2-17-77	2-18-77		2-18-77				

(Use Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 11, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, at 9:30 a.m. on the above date in Room 442 of the State Capitol Building.

ROLL CALL:

All members of the committee were present with Senators Towe and Murray arriving late from other meetings.

WITNESSES PRESENT TO TESTIFY:

Joseph P. Mazurek - attorney with law firm of Gough, Booth. Shanahan & Johnson - Helena, representing Catholic Charities
Allen Cain - Helena attorney, representing the Montana Children's Home
Russ McKenzie - Great Falls attorney, representing the Lutheran Social Services
Robert Weber - attorney for SRS
Tom Honzel - Deputy County Attorney, Lewis & Clark County
Hutchinson - attorney, Montana Legal Services

CONSIDERATION OF SENATE BILL 311:

Since Senator Turnage, Chairman of this committee, had introduced this bill, he had Senator Roberts, Vice-Chairman, preside over this meeting at this time.

Joseph Mazurek, an attorney with the law firm of Gough, Booth, Shanahan & Johnson, who represent Catholic Charities, Inc., was the first proponent to testify. He read a prepared statement in support of this bill. (See Exhibit 1)

The next proponent was Allen Cain, a Helena attorney who represents the Montana Children's Home, who said that their chief interest is in placing a child for adoption as soon as possible after birth in a home for the good of the child. He suggest an amendment to page 7, lines 10, 11 and 12. (See Exhibit 2)

The next proponent was Russ McKenzie, a Great Falls attorney, representing the Lutheran Social Services, who said that this bill will eliminate the problem of waiting too long for the father to say if he is interested in giving the child parental care.

The next proponent to testify was Richard Weber, an attorney for the department of SRS, who said that they are satisfied that this bill will solve many of the problems encountered by the agency in these matters.

Tom Honzel, Deputy County Attorney for Lewis & Clark County, said that they handle most of the adoptions in this county and that

they believe that this bill will eliminate many of the problems encountered due to the rights of fathers.

There being no more proponents of S.B. 311 to testify, the opponents were allowed to begin their testimony. The first opponent was William D. Hutchison, attorney, Montana Legal Services, who said that he felt the question of parental rights might be challenged by state agencies. He said that he recognized that there are problems being faced by adoption agencies at the present time and that his main objection is to the standard set forth which imposes upon the courts the implementing and determining of the father's rights. He further said that the problem is in utilizing this to the best interest of the child and that he fears that the courts will look at who is more likely to provide parental care. He also said that custody is not the issue; it is whether the father wishes to retain his parental rights.

Mr. Allen Cain was allowed by the Chairman to respons to the last comment of Mr. Hutchison and he said that he knows of only one instance in which the father came in and actually sought parental rights since this law became effective. He further said that not many fathers are interested in claiming parental rights and that he believes the only workable standard is to allow the courts to make the decision on parental rights.

At this time, 10:15 a.m., Senator Murray arrived in committee from another meeting.

Mr. Hutchinson, the opponent of S.B. 311 who had last testified, said that this bill is better than the current law.

CONSIDERATION OF SENATE BILL 356:

This bill was also sponsored by Senator Turnage, Chairman of this committee, so Senator Roberts, Vice-Chairman, again was acting Chairman. He asked Greg Morgan, representing the Montana Bar Association, to explain the bill.

John Larson, a Butte attorney, testified as a proponent of S.B. 356, saying that through this bill they hoped to obtain the right to pursue the legal code of ethics. However, he said that many states do not allow attorneys right out of law school to be covered by malpractice insurance.

At this time, Senator Roberts allowed the committee to question the witness. It was brought out during the questioning that medical malpractice is 5 years after discovery and that architectural malpractice is 10 years after discovery. Greg Morgan told the committee that the State Bar does not want to change the present law regarding minors.

There being no further business, the committee adjourned at 11:00 a.m.. An executive session was set for adjournment on Monday, February 14,1977, by the Chairman.

Leon D. Turnage

2/14/77

(E. 1)

TESTIMONY OF JOSEPH P. MAZUREK

IN SUPPORT OF SENATE BILL 311

Senate Bill 311 represents a year-long effort by representatives of the three licensed adoption agencies in the State of Montana and the Department of Social and Rehabilitation Services to supplement and clarify the provisions of the Uniform Parentage Act. The proposal adds new procedural provisions to the Act in order to resolve some confusion and codify a fair and workable process. It also represents an attempt by adoption agencies to resolve practical problems which have arisen in the course of implementation of the Uniform Parentage Act.

The existing provisions do not provide a means for terminating the parental rights of a mother who proposes to release custody of her child for adoption without resorting back to the abused, neglected and dependent youth provisions of Title 10. As a result, an agency is required to go through two separate hearings in order to obtain custody of a child. It must first terminate the rights of the natural father; and, thereafter, request the county attorney to petition the court to have the child declared dependent and terminate the rights of the natural mother. The latter process requires the agency and the court to engage in a fiction because the mother generally relinquishs her right to the child on the basis of her love for the child and her concern for its best interests.

The most significant problem with the existing law is that it does not provide a mechanism for the court to terminate the parental rights of a natural father whose identity is known but who cannot be located, or whose identity cannot be determined. This bill will allow the termination of the rights of a natural father where it can be shown that he has failed to provide support to the mother or otherwise show interest in the child. It will also free county attorneys from involvement in adoptions and allow early placement where the father concurs in the mother's decision. The bill is designed to establish an orderly procedure for the termination of parental rights and at the same time guarantee due process to both the mother and the father of the child.

Over the past eighteen months, I have personally handled seventy proceedings. I have encountered difficult, factual problems under the Uniform Parentage Act which the existing provisions offered no solution. I believe Senate Bill 311 provides us with those solutions. In order to understand the inter-workings of the proposed bill, it may be helpful to consider the procedure which would be followed by an agency to obtain legal custody of a child proposed to be released for adoptive placement. If a mother decides to

release custody of her child, she may execute a voluntary release before a notary public. Upon filing the release with the court, her parental rights are automatically terminated. If both the mother and father of the child voluntarily execute releases, the court may immediately issue an order terminating their parental rights and awarding custody of the child to the agency. In the vast majority of cases, this is the only provision which will be utilized. It will expedite adoptive placements to the benefit of the child. If the father does not execute a voluntary release, the agency to whom the mother releases the child must file a petition for custody. A hearing must then be conducted by the district court to terminate the father's rights to the child. If the mother reaches her decision to place early in her pregnancy, she may file a notice of intent to release which will be served upon the father. It will advise him that he has been named as the father, that he has right to file a notice of intent to claim paternity before the birth of the child, and that his failure to do so will result in a waiver of his right to notice of the hearing and termination of his parental rights. This notice is given before the child is born, and enables the father to protect his interest in the child.

If the mother did not file a notice of intent to release during her pregnancy, the court must ask her to identify the father. The person identified is then given notice of the hearing. If no person is identified, the court may require publication in a newspaper if it believes that would lead to the father's identification. The name of the mother may be included only with her consent. The mother's right to privacy has been retained in the proposed legislation, and she cannot be compelled to testify to or divulge the identity of the father.

Once the court has identified the father, it may then proceed to terminate his parental rights. If may do so only if the person identified as the father acknowledged paternity but denied his interest in the child, filed a denial of paternity, was served with notice of intent to release but failed to file a notice of intent to claim paternity, or was given proper notice of the hearing but failed to appear. If any of those conditions is met, the father's rights are terminated and custody is awarded to the adoption agency.

Section 61-333(2) provides a solution to who critical problems faced by adoption agencies. It will allow the court to terminate the parental rights of a putative father whose identity is unknown if he has not made provision for the child's care nor provided support for the mother during her pregnancy. It will also enable the court to terminate the rights of a putative father whose identity is known but but whose whereabouts are unknown if that person has not provided support for the mother, has not shown any interest

in the child and has not made provision for the child's care for at least ninety days preceding the hearing. In any event, the court may terminate the rights of a putative father only if the evidence shows that a reasonable effort has been made to identify and locate the father. Emphasized

Section 7 of the Act gives a licensed adoption agency standing vis-a-vis the natural father in the event the natural father appears to claim custody of the child. The adoption agency stands in the shoes of the mother representing her interest in having the child placed for adoption. If the father appears and claims custody, the court must determine whether the best interests of the child will be served by granting custody to him or to the agency.

As I stated previously, this bill represents a cooperative effort on the part of all of the adoption agencies to resolve practical, procedureal problems encountered during the past eighteen months of working with the Uniform Parentage Act. We recognize and respect the rights of both parents to due process of law. The bill guarantees notice of all proceedings and an opportunity to be heard. At the same time, it establishs an orderly procedure for the termination of parental rights without involvement of the county attorney and without the necessity of accusing the mother of abuse, neglect or abandonment of the child. The bill will give the agencies a reasonable means to deal with the difficult problem of the unknown or unlocatable father, and will insure the early adoptive placement of newborn children. On behalf of Catholic Charities of Montana, Inc., and the other licensed adoption agencies, I respectfully urge your passage of this bill.

Joseph P. Mazurek
Attorneys for Catholic Charities
of Montana, Inc.

THIS SECTION SHALL NOT BE APPLICABLE IF THE FATHER IS A PERSON WHOSE CONSENT TO ADOPTION IS NOT REQUIRED UNDER 61-205.

(Ex. 2)

Kain, MT Children's Home

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 18, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, at 9:00 a.m. in Room 442 of the State Capitol Building on the above date.

ROLL CALL:

All members of the committee were present, however, Senators Regan and Roberts arrived at 9:55 and 9:40 respectively, and Senator Warden arrived at 10:05 and was excused again at 10:30 a.m.. These senators were excused to make presentations in other committees.

EXECUTIVE SESSION

DISPOSITION OF SENATE BILL 311:

Senator Towe moved the adoption of the attached amendments. (See Attachment #1) The motion carried unanimously. He then moved that S.B. 311 as amended DO PASS. The motion carried unanimously.

DISPOSITION OF SENATE BILL 335:

Senator Towe moved the adoption of the amendments previously made. The motion carried unanimously. (See attachment #2)

Senator Lensink moved that S.B. 335 as amended DO PASS. The motion carried unanimously.

HEARING - 9:30 a.m.

CONSIDERATION OF SENATE BILL 439:

Senator Hazelbaker presented the bill to the committee as he had sponsored it at the request of the Crime Control Board. He then introduced Wally White of the Board of Crime Control who said that the committee who wrote the bill has five members present at this meeting and that it was written because of a requirement in the federal register that came out in March, 1975, requiring states to make confidentiality regulations about records, and it provides that people can have their records, such as police records, checked for accuracy.

The next proponent of the bill was Ron Semple of the Independent Record in Helena, representing the Montana Press Assn., who said he believed this can be made an excellent bill by adding on page 11, line 16, following the word "about", the word "arrests,". (See Exhibit 1) He further said that this is a fine thoughtful piece of legislation.

Respectfully report as follows: That ..... Bill No. 311

SENATE

Attach #1

the introduced bill, be amended as follows:

1. Amend title, lines 6 and 7.
Following: "ADOPTION;"
Strike: "AMENDING SECTION 61-3[illegible]3, R.C.M. 1947;"
Following: "SECTIONS"
Insert: "61-317,"
Following: "61-325"
Insert: ","

2. Amend page 1, section 1, line 19.
Following: "Montana"
Strike: "or"
Insert: ","
Following: "agency"
Insert: ",or a person"

3. Amend page 2, section 1, line 14.
Following: "Montana"
Strike: "or"
Insert: ","
Following: "agency"
Insert: ", or the person"

Chairman

STATE PUB. CO.
Helena, Mont.

4. Amend page 2, section 1, line 22.
Following: "Montana"
Strike: "or"
Insert: ","
Following: "agency"
Insert: ", or person"

5. Amend page 3, section 2, line 18.
Following: "Montana"
Strike: "or"
Insert: ","
Following: "agency"
Insert: ", or the person"

6. Amend page 9, section 5, line 10.
Following: "61-331"
Strike: "(1)"
Insert: (2)"

7. Amend page 9, section 5, line 22.
Following: "hearing"
Strike: "may"
Insert: "must"

8. Amend page 13, section 7, line 3.
Following: "whether"
Insert: "the father's parental rights should be given recognition in view of his effort or lack of effort to make provision for the mother while she was pregnant and for the child upon birth and whether"

9. Amend page 13, section 7, line 5.
Following: "Montana"
Strike: "or"
Insert: ","

10. Amend page 13, section 7, line 6.
Following: "agency"
Insert: ", or person"

11. Amend page 13, section 7, line 12.
Following: "Montana"
Strike: "or"
Insert: ","

13. Amend page 13, section 7, line 13.
Following: "adoption agency"
Insert: ", or a person"
Following: "the agency"
Insert: "or person"

14. Amend page 13, section 8, lines 21 through line 8 on page 14.
Following: line 20
Strike: section 8 in its entirety
Renumber: subsequent subsections

EMJ

15. Amend page 14, section 9, line 9.
Following: "Sections"
Insert: "61-317,"
Following: "61-325"
Insert: ","

House

Judiciary COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 311	clarify procedures for termination of parental rights of children to be released for adoption, etc.	3-2	Turnage	March 14 Monday	concurred in	3/25
SB 359	provide that water rights & certain preferred uses in excess of 20 cubic ft etc.	3-2	Lowe	March 2 Tues.	water concurred in amended	3/25
SB 393	provide for enforcement of air & water pollution laws by the dept of health & Env sciences etc.	3-2	Brown	March 14 Monday	concurred in	3-16
SB 402	establish a mandatory pretrial review panel for medical malpractice.	3-2	Murray	March 14 Monday	table	3-17
SB 413	revise & clarify laws relating to commitment of mentally ill persons.	3-2	Towe	March 15 Tues	concurred in amended	2/25
SB 9	for the revision of laws relating to gambling	3-8	Graham	no hearing	concurred in amended	3/22

JUDICIARY COMMITTEE
March 14, 1977

The meeting of the House Judiciary Committee was held at 8:00 a.m. on Monday in room 436 of the Capitol Building, Helena, Montana. Chairman Scully presided. All members were present with the exception of Representatives Colburn, Conroy and Roth.

Scheduled for hearing were SJR 16 and Senate Bills 393, 187, 311, and 402.

SENATE BILL #311:
SENATOR TURNAGE, DISTRICT #13:
This is a bill to clarify the procedures for the termination of the parental rights of children proposed to be released for adoption. It would formally execute a release of parental rights to the child if voluntarily relinquished for adoption.

JOHN FRANKINO, Montana Catholic Conference:
We wanted to monitor the adoption act. We are very concerned about the welfare of these children and their protection under the law. We very much support this bill.

JOSEPH P. MAZUREK:
This bill represents a year-long effort. We feel that SB 311 solves the problems. He mentioned the types of problems that might come up and how they are handled now, if at all. The major problem is dealing with the unknown or hard to find father. I think this bill solves a lot of these problems. He discussed the automatic termination of the parental rights of both the mother and the father if they voluntarily relinquish the child. In 70% of the cases that is all that will be required. In other cases there may be no way to locate the father. His rights will be terminated if he does not come forward and does not file a notice of intention. We urge passage of this bill.

PROPONENT, ALAN CAIN, MONTANA CHILDREN'S HOME & HOSPITAL:
This bill is a joint effort by all of these agencies and they have had a lot of input into this bill. Some of our include the location of the childs father or the identification of the father. This bill has good machinery for helping us solve these problems, and it will protect the child as well.

PROPONENT, RICHARD WEBER, SRS:
We supported the bill in the Senate and will support it in the House. I am concerned about the amendment on page 1, lines 20 and 21, and again on page 2 containing the words "or a person". We feel this will remove current standards. This may not be the effect but I would like to see it changed.

PROPONENT, TERYE HAGGERTY, LUTHERAN SOCIAL SERVICES:
We are in favor of this bill.

PROPONENT, TOM HONZEL, L&C DEPUTY COUNTY ATTORNEY:
I support this bill for reasons that have already been outlined. In addition, we represent at the district court level the SRS.

THERE WERE NO OPPONENTS.

REPRESENTATIVE KEYSER AND MR. WEBER:
They discussed the licensing procedure and the possibility that a private person may not have to be licensed.

REPRESENTATIVE HOLMES:
Could the language be changed to make this more clear.

MR. WEBER:
It could say, "or is licensed to place".

SENATOR TURNAGE:
I think this should be left as it is and I feel so strongly about it, that if it is taken out there will have to be a conference committee.

MR. MAZUREK:
We have no problem with the language.

SENATOR TURNAGE:
There is also the requirement that you must notify SRS.

REPRESENTATIVE RAMIREZ:
Did you investigate the constitutionality of the notice.

MR. MAZUREK:
Our interpretation of that decision is that they would have to adopt a reasonable standard. We think we are going to a reasonable length. The courts have said that the rights of the child have to be taken care of regardless of the rights of the fat her and if reasonable means is taken to locate the father, then his rights are subject to being cut off. Discussion about the Michigan statute.

REPRESENTATIVE RAMIREZ:
Does the Michigan statute have the same provision.

MR. MAZUREK:
No, that was retained from present Montana law, and that is the right of the mother to privacy.

A general discussion followed about this right of privacy, the rights of the child and of the father, etc.

The hearing closed on Senate Bill #311.

the committee should consider leaving in amendment #1 and rejecting amendment #11. After a lengthy discussion the question was called and the motion carried with Representatives Dussault, Baeth, Holmes, and Courtney voting "no".

Representative Holmes moved to amend page 3, line 7. After some discussion the question was called and the motion failed with only Representative Holmes voting "yes".

Representative Hand moved Senate Bill #413 "be concurred in as amended". The motion carried with the vote unanimous.

SENATE BILL #311:
Representative Ramirez moved "be concurred in". He discussed his feelings concerning page 13, line 4, the rights of the father. He said that after giving it a lot of thought he would not offer any amendments. The motion carried with the vote unanimous.

CHAIRMAN SCULLY appointed the following representatives to carry the various senate bills that had been acted upon.

Senate Bill 311	Ramirez
Senate Bill 413	Courtney
Senate Bill 37	Lory

REPRESENTATIVE DAY will appoint the people to carry the water bills.

CHAIRMAN SCULLY reminded the members to give him their lists of priorities that would be offered for interim studies. They are to pick a 1st and 2nd priority and then in descending order to the bottom of the list which totals 7.

The meeting adjourned at 10:05 a.m.

JOHN P. SCULLY, CHAIRMAN

Mary Ellen Connelly

Mary Ellen Connelly, Secretary

SENATE BILL NO. 311

INTRODUCED BY TURNAGE, ROBERTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE PROCEDURES FOR THE TERMINATION OF THE PARENTAL RIGHTS OF CHILDREN PROPOSED TO BE RELEASED FOR ADOPTION; ~~AMENDING SECTION--61-317,--R.C.M.--1947;~~ REPEALING SECTIONS 61-317, 61-325, AND 61-326, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. There is a new R.C.M. section numbered 61-328 that reads as follows:

61-328. Form, execution, and revocation of releases -- termination of parents' or guardians' rights. (1) Any parent or guardian who proposes to relinquish custody of a child for purposes of placing the child for adoption may do so by formally executing a release whereby all parental rights to the child are voluntarily relinquished to an agency of the state of Montana ~~or~~, a licensed adoption agency, OR A PERSON.

(2) Except as otherwise provided in this section, a release shall be by a separate instrument executed before a notary public.

(3) If the person from whom a release is required is a member of any of the armed services or is in prison, the release may be executed and acknowledged before any person authorized by law to administer oaths.

(4) If the release is executed in another state or country, the court having jurisdiction over the adoption proceeding in this state shall determine whether the release was executed in accordance with the laws of that state or country and may not proceed unless it finds that the release was so executed.

(5) Upon the filing of the release of a child by a parent or guardian, the court immediately shall issue an order terminating the rights of that parent or guardian to that child. If the rights of both parents, the surviving parent, or the guardian have been terminated, the court shall issue an order committing the child to the agency of the state of Montana ~~or~~, the licensed adoption agency, OR THE PERSON to which the release was given.

(6) Entry of an order terminating the rights of both parents pursuant to subsection (5) terminates the jurisdiction of the district court over the child in any divorce or separate maintenance action.

(7) Upon petition of the person or persons who executed the release and of the agency of the state of Montana ~~or~~, licensed adoption agency, OR PERSON to which the child was released, the court with which the release was

filed may grant a hearing to consider whether the release should be revoked. A release may not be revoked if the child has been placed for adoption. A verbatim record of testimony related to a petition to revoke a release shall be made.

Section 2. There is a new R.C.M. section numbered 61-329 that reads as follows:

61-329. Children born out of wedlock -- release -- consent. (1) If the mother of a child born out of wedlock proposes to release the child for adoption and the release or consent of the natural father cannot be obtained, the child may not be placed for adoption until the parental rights of the father are terminated by the court as provided in this chapter, by the court pursuant to Title 10, chapter 13, or by a court of competent jurisdiction in another state or country.

(2) Pending the termination or other disposition of the rights of the father of the child born out of wedlock, the mother may execute a release terminating her rights to the child. If the mother releases the child, the agency of the state of Montana ~~or~~, the licensed adoption agency, OR THE PERSON to which the child is released may file a petition under this chapter or a petition of dependency or neglect pursuant to Title 10, chapter 13. Pending disposition of the petition, the court may enter an order authorizing temporary care of the child.

(3) At the request of the mother, her formal execution of a release shall be delayed until after the court has determined the identity of the father and has awarded custody of the child to the father or terminated his rights under this chapter.

Section 3. There is a new R.C.M. section numbered 61-330 that reads as follows:

61-330. Notice of intent to claim paternity. (1) Before the birth of a child born out of wedlock, a person claiming under oath to be the father of the child may file a verified notice of intent to claim paternity with the district court in any county of this state. The form of the notice shall be prescribed by the director of the department of health and environmental sciences and supplied to the clerks of the district courts. The notice shall include the claimant's address. On the next business day after receipt of the notice, the court shall transmit the notice to the records and statistics bureau of the department of health and environmental sciences. If the mother's address is stated on the notice, the records and statistics bureau shall send a copy of the notice by first-class mail to the mother of the child at the stated address.

(2) A person filing a notice of intent to claim paternity or acknowledging paternity in accordance with 61-305 shall be presumed to be the father of the child for

purposes of this chapter unless the mother denies that the claimant is the father. Such notice is admissible in a paternity proceeding under 61-307 and creates a rebuttable presumption as to the paternity of that child for purposes of that section. Such notice creates a rebuttable presumption as to paternity of the child for purposes of a dependency or neglect proceeding under Title 10, chapter 13.

(3) A person who makes a timely filing of notice of intent to claim paternity or who formally acknowledges paternity under 61-305 is entitled to notice of any hearing to determine the identity of the father of the child and any hearing to determine or terminate his paternal rights to the child.

Section 4. There is a new R.C.M. section numbered 61-331 that reads as follows:

61-331. Expected child -- intent to release or consent, petition and notice. (1) In order to provide due notice at the earliest possible time to a putative father who may have an interest in the custody of an expected child or in the mother's intended release of an expected child for adoption and in order to facilitate early placement of a child for adoption, a woman pregnant out of wedlock may file with the district court an ex parte petition which sets forth the following:

(a) her intent to release her expected child for

adoption;

(b) the approximate date and location of conception;

(c) the expected date of her delivery; and

(d) the identity and whereabouts of the putative father of her expected child.

(2) The petition may allege more than one putative father whenever circumstances warrant. The petition shall be verified. Upon the filing of the petition, the court shall issue a notice of intent to release, which notice shall be served upon the putative father or fathers in the manner provided by the Montana rules of civil procedure or in any other manner which the court may direct. Proof of such service shall be filed with the court.

(3) A notice of intent to release shall:

(a) indicate the approximate date and location of conception of the child and the expected date of delivery;

(b) inform the putative father of his right under 61-330 to file a notice of intent to claim paternity before the birth of the child;

(c) inform the putative father of the rights to which his filing of notice of intent to claim paternity will entitle him under 61-330(3); and

(d) inform the putative father that his failure to file a notice of intent to claim paternity before the expected date of delivery constitutes a waiver of his right

to receive the notice to which he would otherwise be entitled under 61-330(3) and constitutes a denial of his interest in the custody of the child, which denial shall result in the court's termination of his rights to the child.

(4) The petition shall be filed with the court not later than 30 days prior to the expected date of delivery.

Section 5. There is a new R.C.M. section numbered 61-332 that reads as follows:

61-332. Proceeding to determine father's identity and terminate rights. (1) If a child is born out of wedlock and the mother executes or proposes to execute a release terminating her rights to the child or if the child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished or the mother or person having custody of the child shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by the court. The court shall hold a hearing as soon as practical to determine the identity of the father and to determine or terminate the rights of the father as provided in this section and in 61-333 and 61-334. THIS SECTION IS NOT APPLICABLE IF THE FATHER IS A PERSON WHOSE CONSENT TO ADOPTION IS NOT REQUIRED

UNDER 61-205.

(2) Proof of service of a notice of intent to release or the putative father's verified acknowledgment of notice of intent to release shall be filed with the court, if such notice was given to the putative father. The court shall request the records and statistics bureau of the department of health and environmental sciences to send to the court a copy of any notice of intent to claim paternity of the particular child which the bureau has received.

(3) If the mother has failed to name a putative father or has failed to file a notice of intent to release, the court shall cause inquiry to be made of the mother in an effort to identify the natural father. The inquiry shall include the following: whether the mother was married at the time of conception of the child or at any time thereafter; whether the mother was cohabitating with a man at the time of conception or birth of the child; whether the mother has received support payments or promises of support payments with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child. Notwithstanding this section or any other provisions of law and in consideration of her right to privacy, no mother of a child who is the subject of proceedings under this act may be compelled to testify concerning, or to

divulge the identity of, the father or possible father of that child.

(4) Notice of the hearing shall be served upon the following persons in the manner appropriate under the Montana rules of civil procedure or any manner which the court shall direct:

(a) a putative father who has timely filed a notice of intent to claim paternity as provided in 61-330 or 61-331;

(b) a putative father who has not been served with a notice of intent to release at least 30 days before the expected date of delivery specified in the notice of intent to release;

(c) any other male who was not served pursuant to 61-331~~(1)~~(2) with a notice of intent to release and who the court, after inquiry of the mother or any other appropriate person, has reason to believe may be the father of the child.

(5) The notice of hearing shall inform the putative father that his failure to appear at the hearing constitutes a denial of his interest in custody of the child, which denial will result in the court's termination of his rights to the child.

(6) Proof of service of the notice of hearing required by subsection (4) shall be filed with the court. A verified acknowledgment of service by the party to be served is proof

of personal service. Notice of hearing ~~may~~ NEED not be required if the putative father is present at the hearing. A waiver of notice of hearing by a person entitled to receive it is sufficient. If no person has been identified as the natural father or possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and, if so, shall order publication or public posting at the times and places and in the manner it considers appropriate. The name of the natural mother may be included in such publication only with her written consent.

(7) At the hearing, the court shall receive evidence as to the identity of the father of the child. Based upon the evidence received and the court's inquiry, the court shall enter a finding identifying the father or declaring that the identity of the father cannot be determined.

(8) If the court finds that the father of the child is a person who did not receive either a timely notice of intent to release pursuant to 61-331 or a notice required pursuant to 61-332(4) and who has not waived his right to notice of hearing and is not present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing.

Section 6. There is a new R.C.M. section numbered

61-333 that reads as follows:

61-333. Grounds for termination of father's rights. (1) If the court has proof that the person who it determines pursuant to 61-332 to be the father of the child was timely served with notice of intent to release pursuant to 61-331 or was served with or waived the notice of hearing required by 61-332(4), the court may permanently terminate the rights of the putative father if:

(a) the putative father submits a verified acknowledgment of his paternity and a denial of his interest in custody of the child;

(b) the putative father files a denial of paternity. For purposes of this section the filing of the denial of paternity constitutes a waiver of notice of hearing and constitutes a denial of his interests in the custody of the child;

(c) the putative father was served with a notice of intent to release in accordance with 61-331(2) at least 30 days before the expected date of delivery specified in that notice but failed to file an intent to claim paternity either before the expected date of delivery or before the birth of the child; or

(d) the putative father is given proper notice of hearing in accordance with subsection (4) or (6) of 61-332 but either fails to appear at the hearing or appears and

denies his interest in the custody of the child.

(2) If the identity of the father cannot be determined or if the identity of the father is known but his whereabouts cannot be determined, the court shall receive evidence to determine the facts in the matter. The court may terminate the rights of the putative father if the court finds from the evidence that reasonable effort has been made to identify and locate the father and that any of the following circumstances exist:

(a) The putative father, whose identity is not known, has not made a provision for the child's care and did not provide support for the mother during her pregnancy or during her hospitilization.

(b) The putative father, whose identity is known but whose whereabouts are unknown, has not provided support for the mother, has not shown any interest in the child, and has not made provision for the child's care, for at least 90 days preceding the hearing required under 61-332.

(3) Subject to the disposition of an appeal, upon the expiration of 6 months after an order terminating parental rights is issued under this section, the order cannot be questioned by any person, in any manner or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.

Section 7. There is a new R.C.M. section numbered 61-334 that reads as follows:

61-334. Best interests of the child -- custody to father -- legitimation. (1) If the putative father appears at the hearing and requests custody of the child, the court shall inquire into his fitness and his ability to properly care for the child and shall determine whether THE FATHER'S PARENTAL RIGHTS SHOULD BE GIVEN RECOGNITION IN VIEW OF HIS EFFORT OR LACK OF EFFORT TO MAKE PROVISION FOR THE MOTHER WHILE SHE WAS PREGNANT AND FOR THE CHILD UPON BIRTH AND WHETHER the best interests of the child will be served by granting custody to him or to the agency of the state of Montana or, licensed adoption agency, OR PERSON to which the mother has released or proposed to release custody of the child. If the court finds that it would not be in the best interests of the child to grant custody to the putative father, the court shall terminate his rights to the child.

(2) If the mother of the child has released the custody of the child to an agency of the state of Montana or, a licensed adoption agency, OR A PERSON, the agency OR PERSON shall be a proper party to petition the court for custody of the child.

(3) If the parental rights of the mother are terminated pursuant to this chapter or other law and if the court awards custody of the child out of wedlock to the

putative father, the court shall enter an order granting custody to the putative father and legitimating the child for all purposes.

~~Section 8. Section 61-317, R.C.M. 1947, is amended to read as follows:~~

~~"61-317. Costs. The court may order reasonable fees of counsel, experts, and the child's guardian ad litem, and other costs of the action and pre-trial proceedings, including blood tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid out of the treasury of the county in which the action is brought. Attorneys' fees may not be assessed against an agency of the state of Montana or a licensed adoption agency which brings an action under this chapter to terminate the parental rights of a natural parent.~~"

Section 8. Repealer. Sections 61-317, 61-325, and 61-326, R.C.M. 1947, are repealed.

Section 9. Effective date. This act is effective on its passage and approval.

-End-